

NO. 26027

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

MICHAEL ESTRELLA, Defendant-Appellant.

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 98-0749(2), CR. NO. 99-0255(2), CR. NO. 00-1-0371(2),
FC-CR NO. 00-1-0967(2))

ORDER VACATING THE JUDGMENT OF CONVICTION AND REMANDING
THIS CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS TO HOLD
AN EVIDENTIARY HEARING REGARDING THE ISSUE WHETHER THE
CIRCUIT COURT SHOULD TERMINATE DEFENDANT-APPELLANT MICHAEL
ESTRELLA'S PARTICIPATION IN THE DRUG COURT PROGRAM
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Upon review of the parties' briefs and the record, it appears that Plaintiff-Appellee State of Hawaii's (Appellee State) confession of error is supported by the record and well-founded in law. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). The Circuit Court of the Second Circuit, State of Hawai'i, the Honorable Shackley F. Raffetto presiding, erred by terminating Defendant-Appellant Michael Estrella's participation in the drug court program (see HRS § 706-605.1 (Supp. 2003)) without first holding an evidentiary hearing on the issue whether the circuit court should terminate Appellant Estrella's participation in the drug court program based on the laboratory test results of Appellant Estrella's hair sample. Pursuant to the guarantees of procedural due process under the fourteenth amendment of the United States Constitution and article I, section 5 of the Hawai'i Constitution, Appellant Estrella was entitled to an evidentiary hearing so that he could adduce

evidence in support of his defense, contest the validity of adverse evidence, and cross-examine adverse witnesses. Cf. Ringor v. State, 88 Hawai'i 229, 240, 965 P.2d 162, 173 (App. 1998); State v. Eline, 70 Haw. 597, 603-04, 778 P.2d 716, 720 (1989). Therefore, with respect to the July 15, 2003 judgment of conviction against Appellant Estrella for the unauthorized control of a propelled vehicle in violation of HRS § 708-836 (1993 & Supp. 1998), promoting a detrimental drug in the third degree in violation of HRS § 712-1249 (1993), bail jumping in the first degree in violation of HRS § 710-1024 (1993), promoting a dangerous drug in the third degree in violation of HRS § 712-1243 (1993 & Supp. 2000), unlawful possession of drug paraphernalia in violation of HRS § 329-43.5 (1993), and criminal contempt of court in violation of HRS § 710-1077 (1993) in the consolidated cases of Criminal No. 98-0749, Criminal No. 99-0255, Criminal No. 00-1-0371, and Family Court Criminal No. 00-1-0967,

IT IS HEREBY ORDERED that the July 15, 2003 judgment of conviction against Appellant Estrella is vacated, and this case is remanded the Circuit Court of the Second Circuit, State of Hawai'i, with instructions to hold an evidentiary hearing on the issue whether the drug court should terminate Appellant Estrella's participation in the drug court program.

DATED: Honolulu, Hawai'i, June 15, 2004.